

EPA
PUBLIC HEARING
LOWER DUWAMISH WATERWAY SITE

7:00 p.m.
Wednesday
August 16, 2000

Union Hall
9135 15th Place
Seattle, Washington

COPY

ELAINE K. RIPPEN, RPR
NORTHWEST COURT REPORTERS
1415 Second Avenue, Suite 1107
Seattle, Washington 98101

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P R O C E E D I N G S

MR. HUEY: My name is Rick Huey. I am the project manager for the Lower Duwamish Waterway Site for the Department of Ecology's toxics cleanup program and I am the hearings officer for the public hearing portion of tonight's meeting.

As we've said earlier, we are here tonight to take public comments on the administrative order on consent and the statement of work for the Lower Duwamish Waterway Site. So far this evening we've had a presentation on the site, the order, and the statement of work, and have discussed these items with you for about 60 minutes. Now we will begin the formal public hearing. We will record your oral comments for the record.

Let the record show that it is about 8:21 p.m., August 16, 2000. And this hearing is being held at the Union Hall, located at 9135 15th Place South in the South Park area of Seattle. Notices of this hearing were published in the Seattle Times. In addition, notices of this hearing were mailed to about one thousand interested people.

As tonight's hearings officer my job is to conduct the hearing. To do that I have two main responsibilities. First, I need to make sure that

1 everyone who wants to comment has the opportunity; and
2 second, I need to make sure that ecology and EPA
3 obtain a clear record of the hearing, and that's why
4 we have a court reporter here tonight.

5 So to do my job I'll need a few things.
6 First, Cindy will be calling on you in the order of
7 which you provided your name on the sign-in sheet for
8 making comments, and I think Kathy will again be going
9 around with the microphone. And speakers, please wait
10 for the microphone to come to you and state your name
11 and if you would spell your last name, in particular,
12 probably, so we can get it correct for the record and
13 then your address and go ahead and make your comments.

14 And I want to make sure that everyone has a
15 chance to comment here tonight. We have a good time
16 for everyone. So we'd like to limit your speaking
17 time to about -- and I'm going to check briefly --
18 we've got approximately four minutes to speak here,
19 just to fit in the number of people that want to speak
20 in the remaining time. Remember, you can still submit
21 written comments or comments by e-mail to us, so don't
22 feel that this need to constrain you. You can make
23 general statements and then give us all the detail you
24 want in other ways.

25 So we've already had time to discuss the site

1 order and statement of work and answer questions. And
2 you can ask a question for the record, but we won't
3 have time to answer them here. The way we will reply
4 to those questions and also the way we will address
5 formal comments is to do what we call a responsiveness
6 summary. After the end of the formal comment period
7 on October 16, the agencies will look at all the
8 comments and questions that come in formally and we'll
9 make sure those are addressed, and then that document
10 will be made available. We'll put it the information
11 repositories, we will put it on the web site. If you
12 need to have a copy for yourself, we can provide it
13 for you.

14 It looks like we can go ahead and begin now.

15 MS. COLGATE: We have nine people who have
16 signed up to comment tonight. And, as Rick said, in
17 order to have time for everyone, we'd ask that you
18 speak for about four minutes, and I will be keeping
19 track of that.

20 For the record, as I said earlier in the
21 evening, I am Cindy Colgate, I am the community
22 involvement coordinator for EPA for this site.

23 The first person on our list to comment is
24 Charlie Cunniff. And Kathy Viet, as Rick said, will
25 begin taking the microphone around to people.

1 MR. CUNNIFF: My name is Charlie Cunniff,
2 last name is C-u-n-n-i-f-f. I represent ECOSS,
3 Environmental Coalition Of South Seattle, also the
4 Greater Duwamish Business Council, and the Community
5 Advisory Group. I'm wearing a variety of hats this
6 evening.

7 As part of the Community Advisory Group, I'm
8 going to comment on the source control issue. We
9 talked about lot of source control things. I just
10 want to reiterate that.

11 Remediation could occur prior to source
12 control. The statement of work does not adequately
13 address the need to achieve source control prior to
14 the beginning of remediation. While the statement of
15 work provides for a collection of information of
16 potential sources of contamination and historical
17 source control settings, the statement of work doesn't
18 indicate in any detail how this information will be
19 used other than to screen candidate sites for other
20 remediation.

21 Clearly there are numerous sources of
22 chemicals entering our waterway that have not been
23 controlled, making early cleanup premature and perhaps
24 a waste of resources. It makes no sense to undertake
25 remediation without first controlling sources. For

1 example, the advisory group knows it will take King
2 County perhaps until 2035 to control all their CSO's.
3 The City of Seattle still has not provided a time
4 table for control of their CSO's.

5 Groundwater also transports heavy metals and
6 other chemicals to the waterway from upland sites.
7 For example, the Tio to (phonetic) Chevron property
8 near the Duwamish diagonal CSO, this source of copper
9 is still not controlled.

10 In addition, as representing the Greater
11 Duwamish Business Council, there is considerable
12 concern about people who own property or operate on
13 property that's on or adjacent to the shoreline that
14 may have had contaminated sediments deposited on their
15 shoreline for which they've never had responsibility
16 for contaminating themselves. So I think as we go
17 through this process, earlier it was said that we were
18 going to try to identify additional responsible
19 parties, we employ you to be very careful in that
20 process.

21 MS. COLGATE: Thank you, Charlie.

22 The next person on our list is (b) (6).

23 MR. (b) (6) I'd like to pass.

24 MS. COLGATE: The next person is (b) (6) -- I'm
25 afraid I'm going to mispronounce this.

1 MR. (b) (6) That's all right. My name is
2 (b) (6). It's spelled the same way as the
3 baseball player, (b) (6)
4 I live at [REDACTED].
5 I'm a member and a director for the Georgetown Crime
6 Prevention and Community Council, our neighborhood
7 group. I'm also a member of what we call Friends of
8 Shoreline Street Ends.

9 And, first of all, I would like to say that I
10 prefer to call what you call the Duwamish Waterway the
11 Duwamish Estuary. And that's how I would like it to
12 be referred to because that gives a different meaning
13 to what we're talking about.

14 I'm one of a group of my neighbors who are
15 involved with stewardship at a site at the street end
16 at the 8th Avenue South on the Georgetown side and we
17 refer to it as Gateway North. I'm interested in
18 access to the river, both what was known as passive
19 access, just to sit and enjoy the view, and also an
20 active access, possibly a boat ramp or fishing. So
21 I'd like to have you look at those sites, especially
22 the many street ends that are in the city that could
23 be and probably will be in the next few years access
24 sites for people.

25 I'm also concerned about that there's no

1 signage of this hazard that are in the sediments,
2 especially down there at Gateway North, which I've
3 seen the recent EPA study last year and I find that it
4 is extremely contaminated. I've led work parties down
5 there before, having children pick up the concrete
6 debris that was illegally dumped there and putting it
7 elsewhere on the site to help shore up the shoreline.
8 Last week I was down there and saw two mothers drop
9 off three young boys at low tide with their inner
10 tubes and said we'll pick you up a mile down the
11 river. So there are children and parents who know
12 nothing of its contamination. If the sites were
13 signed, I believe we'd get a lot more people at
14 meetings such as this if they knew how bad it was.

15 I would also say that hopefully the EPA and
16 Ecology will not only look at the Duwamish Estuary,
17 but look at the whole watershed. I'm concerned about
18 groundwater issues and the whole watershed that is
19 soon coming with its material into the river. Thank
20 you.

21 MS. COLGATE: Thank you.

22 The next person on the list is Glen St.
23 Amant.

24 MR. ST. AMANT: My name is Glen St. Amant,
25 S-t, period, A-m-a-n-t. I'm senior sediment

1 specialist Muckleshoot Indian Tribe Fisheries
2 Department. The address is 39015 172nd Southeast,
3 Auburn, Washington 98092.

4 I'd like to read the following policy
5 statement from the Tribe regarding the proposed
6 cleanup approach for the Lower Duwamish River.

7 The Muckleshoot Indian Tribe has evaluated
8 the first alternative to listing the Lower Duwamish
9 River as a Superfund site. The Tribe has concluded
10 that this alternative does not provide equivalent
11 protection to that of Superfund listing. Therefore,
12 the Tribe strongly supports the listing of the Lower
13 Duwamish River as a Superfund site and formally
14 requests the EPA list the site.

15 The Tribe will be providing detailed written
16 comments to EPA and Ecology on this alternative
17 listing proposal by the conclusion of the public
18 comment period. Thank you.

19 MS. COLGATE: Thank you.

20 The next person on the list is John Strand.

21 MR. STRAND: My name is John Strand,
22 S-t-r-a-n-d. I'm with Columbia Biological Assessments
23 at 1314 Cedar Avenue in Richland, Washington, and I
24 work with the Lower Duwamish Waterway community
25 advisory group and, as such, I represent this evening

1 for these public comments.

2 I've been working with the public advisory
3 group to evaluate, to review and evaluate the
4 statement of work and to help elect some comments,
5 technical comments with respect to the approaches that
6 are described in that document. And while we are
7 submitting a detailed list of comments formally within
8 the public period for comment, I thought it'd be
9 useful to just give you some general understanding of
10 the advisory group's view of the statement of work.

11 Sort of in general terms, we believe that the
12 scientific approach that is articulated in the
13 document, the statement of work, is sound, it is a
14 scientifically sound approach, and that this is
15 probably a good use for risk assessment to be used in
16 the context of prioritizing sites for early
17 remediation. But we feel that the statement of work
18 lacks specificity and detail. We would rather look at
19 this as a conceptual plan or framework document,
20 because it's very difficult for us as scientists to
21 really evaluate thoroughly the particular methods that
22 will be used.

23 For example, the task three that deals with
24 the study design for scoping of the phase risk
25 assessments either ecological or human health, we

1 often find ourselves with a reference that methods
2 that will be employed, at least the statement of work
3 will consider methods that have been employed by
4 others, the Department of Ecology or King County or
5 procedures that are being presently used up in
6 Bellingham Bay for site prioritization. It doesn't
7 tell you what those methods are, it's just a reference
8 to what methods have been used elsewhere.

9 And in task four that deals with the risk
10 characterization and site prioritizaion methods, it's
11 often a laundry list of things that, as the statement
12 of work says, these should be considered, but there's
13 no unequivocal "these are the methods that will be
14 employed."

15 I realize that this is a phased affair and
16 that somewhere down the line five or six months from
17 now we will have a document that I hope we all can
18 review to really get at the methods that in the final
19 analysis will be employed to do this remedial
20 investigation. And, as such, until that document is
21 out and in the public sphere again, we have to sort of
22 withhold our judgment or defer our judgment as to how
23 good the methods that are going to be used or that the
24 Lower Duwamish Waterway group is going to use, will,
25 in fact, do the job. Thank you.

1 MS. COLGATE: Thank you.

2 Our next speaker is Greg Wingard.

3 MR. WINGARD: My name is Greg Wingard, that's
4 W-i-n-g-a-r-d. I'm the executive director of Waste
5 Action Project, P.O. Box 4832, Seattle, Washington
6 98104-0832.

7 There are a couple of things that I would
8 like to mention in regard to this process. One is
9 that there needs to be a really good job done by the
10 agencies in addressing ARAR's, that is looking at the
11 regulatory framework that is appropriate for dealing
12 with this situation. Because of the various nature of
13 the inputs to this problem, it falls under different
14 regulatory schemes and it's important that each of
15 those are addressed in an appropriate fashion, and
16 that in the rush to the goal post that we aren't
17 forgetting had how we should be approaching this whole
18 picture.

19 The decisions that we make here are going to
20 be impacting the river, the ecology, and the people
21 around this river for generations to come. So it's
22 important that the decisions we make not only end up
23 in cleanup on a fast-track basis, but, in fact, yield
24 results that are going to be good for the long-term.

25 The other thing is in terms of the approach

1 is the issue of TMBL's, the issue of the National
2 Pollution Discharge Elimination System or NPDES
3 permits. One of the things I didn't hear mentioned
4 tonight is that under a TMBL approach, one of the
5 primary requirements under the Clean Water Act is to
6 apportion loading among the existing permits, that is
7 that you ratchet down the amount of pollution coming
8 out of the individual facilities that are pollutants
9 of concern in the impacted waterway. So it's
10 important to look at that, it's important to look at
11 upland sites, it's important to deal with groundwater
12 and look at the entire contribution going on in the
13 river.

14 One final issue, and I'll close my comments
15 out, and that's an economic issue. I find it little
16 bit strange to be in the position of advocating being
17 fair to business given my history and background, but
18 I have a concern here that we have some 900-pound
19 gorillas that are sitting down with the agencies and
20 making deals and that a lot of people are not at the
21 table who are going to be held responsible for cost.

22 And a really good example of how this can go
23 really wrong. Loren and I met each other some years
24 back at the Western Processing site in Kent, where he
25 was one of the, I believe, final site managers for EPA

1 at that site. A bit before his time there EPA decided
2 to cut a deal with some big people at Boeing, or
3 Boeing was one of the big people anyhow at the Western
4 Processing Superfund site, and that deal essentially
5 allowed Boeing to shift its responsibility for a good
6 portion of its volume of waste at the site onto the
7 smaller PRP's and PLP's at the Western Processing site
8 and they ended up getting stuck paying for a good
9 share of Boeing's waste.

10 That can't happen here. It is simply not
11 fair to anybody. And there are a lot of little people
12 that really get tromped on by the large gorillas in
13 this process. EPA has a duty under justice to see
14 that that doesn't happen. Thanks.

15 MS. COLGATE: Thank you, Greg.

16 The next person on our list is Pam Johnson.

17 MS. JOHNSON: My name is Pam Johnson. I'm
18 with People for Puget Sound, 1402 Third Avenue, Suite
19 1200, Seattle, Washington 98101.

20 I want to talk a little bit tonight about the
21 importance of public participation and why that is so
22 important in cleanups, especially around Puget Sound.

23 This cleanup is going to be extremely
24 important to the Duwamish River, to the communities
25 around here, but I'd also like to point out it's an

1 important cleanup to the whole of Puget Sound. This
2 year we find out that our orca whales, which we lost
3 ten percent of our Puget Sound population last year,
4 are some of the most contaminated marine mammals in
5 the world because of PCB's. We know they're not
6 getting all of their PCB's from right here in the
7 Duwamish River. But we know that the salmon that they
8 eat are swimming through this river and picking up
9 PCB's and it's having an impact way beyond this river.
10 So I think that that sheds some light on how we have
11 to think about cleanups, to what levels we clean these
12 places up to, and what we consider in that process.

13 Going back to public participation, I want to
14 challenge EPA and Ecology tonight to make this cleanup
15 a model for public involvement. I've been involved in
16 a lot of cleanup processes where, yes, EPA and Ecology
17 has done what they're supposed to under the law,
18 they've had the right amount of days out there for
19 public comment and followed that, and still haven't
20 truly involved the communities. So far it's been
21 great working with Rick on this. I think that the
22 community advisory group has built a level of trust
23 where we feel we're at a good point. We're at the
24 very beginning of this process. So in that challenge
25 we have some ideas on how you can do that as well.

1 One of the things is I'm glad to hear that we
2 have been -- the extended comment period has been
3 granted another 45 days. You guys have spent a long
4 time at the table with the respondents and I think
5 asking for another 30, 15 days to get out, find out
6 what the community has to say about this, to really
7 educate them about what these documents are isn't a
8 whole lot to ask, so I want to thank you for that.

9 And talking to the community about the kind
10 of work that's going on here is really difficult.
11 When you start talking about statement of works and
12 TMBL's and the AOC, people probably don't understand
13 what that means to their daily lives and why they
14 should care. And so again I challenge you to find
15 those ways. Really figure out how you go out into a
16 community group and talk to them about contaminated
17 sediments and how it will impact their lives if
18 they're here in the Duwamish area or in Seattle or
19 just in Puget Sound. So in those next 45 days,
20 hopefully it's more than just the days granted, but
21 some more resources and some more commitment to
22 getting out into the community and getting that public
23 input.

24 Second of all, I want to thank you for
25 working on the equivalent funding through the agreed

1 order. I really hope that that happens because a lot
2 of this work in working with the community can't
3 happen unless there's resources provided. So again I
4 urge you to continue that work and hope to see that
5 happen.

6 And third, I have a request for ongoing
7 commitment to communications throughout this process,
8 not just through the public comment periods, the
9 formal public comment periods. The statement of work
10 and the agreed order that we're looking at are simply
11 outlines of what's going to happen. A lot of the
12 details that will go into the work that will be done
13 are going to happen on a day-to-day basis as you're
14 talking with the respondents. And I hope that other
15 stakeholders and the community can be at the table
16 having input to those decisions, parameters on the
17 risk assessments, where the endpoints are, what the
18 chemicals of concerns are going to be. All of those
19 things which may not happen in decisions that have a
20 formal comment period, there needs to be a meaningful
21 way for the public to have input on that. So I
22 encourage ongoing meaningful and regular
23 communications with anybody in this community that has
24 a concern about this process. So thank you.

25 MS. COLGATE: Thank you, Pam.

1 Our next speaker is (b) (6).

2 UNIDENTIFIED SPEAKER: I believe he left.

3 MS. COLGATE: Our final speaker is Greg
4 Baker.

5 MR. BAKER: I'm Greg Baker and I'm with
6 National Oceanic Atmospheric Administration or NOAA.
7 And by federal law we're a trustee with
8 responsibilities to seek restoration or compensation
9 on behalf of the public for natural resources that
10 have been harmed by releases of hazardous substances.
11 And some of you may wonder how that's different from
12 what EPA's and Ecology's job is. And I guess the best
13 way to describe that would be that as a trustee we
14 seek to assure that the pollution is not just cleaned
15 up, but that the public is made whole for the harm
16 that the pollution caused to natural resources, such
17 as fish and other aquatic resources.

18 NOAA has been working with other natural
19 resource trustees and with EPA and Ecology on efforts
20 to clean up and restore the Duwamish. Some of these
21 efforts are ongoing. In 1991 NOAA and other trustees
22 entered into a consent decree with two of many
23 potentially responsible parties, the City of Seattle
24 and Metro, and has a settlement of the potential
25 claims for natural resource damages in Elliot Bay and

1 the Duwamish. And several actions have been
2 implemented under the terms of that consent decree
3 already, including a sediment cleanup action around
4 the Norfolk outfall and several habitat restoration
5 projects along the river.

6 NOAA is supportive of efforts to expedite
7 cleanup and restoration. However, it's critical that
8 legal rights we have to bring claims for damages are
9 protected. Thus far NOAA has been unable to obtain
10 adequate legal agreements from potential responsible
11 parties to protect our future ability to bring claims.

12 Given this, NOAA has provided to EPA and
13 Ecology a recommendation that the EPA proceed with
14 placing the site on the Superfund national priorities
15 list. We believe at this time that listing the site
16 would provide the best means for achieving cleanup and
17 restoration goals and that all existing efforts to
18 conduct this work cooperatively and expeditiously can
19 be achieved under this framework.

20 I'll mention also that in the same way that
21 early cleanup actions are a stated objective of the
22 cleanup agencies and the PRP's, it is NOAA's goal to
23 seek opportunities to undertake early habitat
24 restoration activities also for the Duwamish. Thanks.

25 MS. COLGATE: Thank you.

1 Since we do have some time remaining, are
2 there others who did not sign up who would still like
3 to make a public comment?

4 MR. (b) (6) My name is (b) (6) .
5 I'm a consultant toxicologist, but I'm here tonight as
6 a private citizen. I've worked on probably 30, 35
7 Superfund sites, including the Duwamish, I've worked
8 in several capacities on the Duwamish site, and I'm
9 familiar with the data on it. And I think that it's
10 quite contaminated and I think there's ample evidence
11 that there is adverse exposure and effects potentially
12 occurring from the contaminated waterway or estuary,
13 as the gentleman pointed out.

14 If you look at the Portland Harbor site down
15 in the Portland, is it being proposed for NPL listing
16 and it's not as contaminated as this site. And I
17 think that -- for example, in The Seattle Times on the
18 first of this month there was a summary of the NIMPS
19 data, some of the toxicology studies, some of which
20 have been listed and proposed for listing in Puget
21 Sound. And I think that is a good example of the
22 state of the art of what we're seeing and potential
23 effects and exposures associated with fisheries and
24 other receptors. So I suggest that it be considered
25 very strongly for NPL listing.

1 MS. COLGATE: Is there anybody else who would
2 like to make a public comment at this time?

3 If there's not, I'll turn this over to Rick
4 Huey to close the public hearing and after that, if
5 anyone has additional questions, we'll have a few
6 moments available for that.

7 MR. HUEY: So here are my closing comments.

8 If you would like submit written comments,
9 please send them to Cindy Colgate, U.S. EPA, 1200
10 Sixth Avenue, Seattle, Washington 98101, by the end of
11 the comment period. An extension of the comment
12 period has been requested for this site. The new date
13 for the end of the comment period is October 16, 2000.
14 All comments from this hearing and all written
15 comments received by the end of the comment period
16 will be part of the official hearing record.

17 On behalf Ecology and EPA, thank you for
18 coming tonight. We appreciate your time and comments.

19 This hearing is adjourned at approximately
20 8:47 p.m.

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CERTIFICATE

I, ELAINE K. RIPPEN, the undersigned Notary Public
in and for the State of Washington, residing in Seattle, do
hereby certify:

That the EPA Public Meeting on the Lower Duwamish
Waterway Site on the 16th day of August, 2000, at 7:00 p.m.,
at the Union Hall, 9135 15th Place, Seattle, Washington, was
stenographically recorded by me and reduced to typewriting
under my personal direction;

I further certify that said transcript, as above
transcribed, is a fully true and correct transcript of the
testimony of each said person at the time of the foregoing
public hearing;

I further certify that I am hereby sealing said
transcript in an envelope, and promptly delivering the same
to the party ordering the transcript.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my official seal this 29th day of August, 2000.

ELAINE K. RIPPEN
RI-PP-EE-K502J2
Notary Public in and for the
State of Washington,
Residing at Seattle
Commission Expires: 6-24-01